REMARKS

Claims 1-20 are pending in this application.

In view of the following remarks, Applicants respectfully request the Examiner to reconsider and withdraw all outstanding grounds of rejection. Applicants respectfully request allowance of the application.

Applicants thank Examiner Bonzo for indicating that claims 4, 8, 9, 17 and 18 contain allowable subject matter.

The Office Action rejects under 35 U.S.C. 102(b) claims 1-3, 5-7, 10-16, 19 and 20 as being anticipated by Chrabaszcz, U.S. Patent Application Publication No. US 2001/0056554-A1 (hereinafter "*Chrabaszcz*"). Applicants traverse these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 Fed. Cir. 1987).

Applicants submit that *Chrabaszcz*, the applied reference, does not expressly or inherently describe each and every element of the claimed invention.

Applicants respectfully submit that *Chrabaszcz* does not disclose or suggest, at least,

> establishing a first instance of a Package for an application on a first Node of a Cluster; establishing at least one second instance of the Package on at least one second Node of the Cluster…wherein each instantiation of the Package contains sufficient information to implement the application on any Node of the Cluster <u>without requiring the first Node to fail-over the application to at least one of the at least one second Node</u> (emphasis added),

as recited, among other features, in independent claim 1.

Chrabaszcz relates to a system for clustering software applications. The Office Action refers to the flow chart shown in Fig. 6 in support of the rejection of independent claim 1. Fig. 6 is a flowchart diagram of a process of determining the registration status of an application loaded on a primary server. As stated in the Office Action at page 3, "[i]f in step 606 it is determined that the preregistered application was previously manually unloaded by a system operator, the process moves to step 610 wherein the process resets the HOST attribute to equal the primary server ID value." *See also Chrabaszcz* at ¶ 69. Manually unloading the application is defined in the specification of *Chrabaszcz* at ¶ 68 to mean exiting from the program. However, *Chrabaszcz* does not disclose or suggest "each instantiation of the

Package contains sufficient information to implement the application on any Node of the Cluster <u>without requiring the first Node to fail-over the application</u> to at least one of the at least one second Node," (emphasis added) as claimed. Thus, exiting from the program as disclosed in *Chrabaszcz* is not equivalent to implementing an application on any node of the cluster without requiring the first node to fail-over the application to a second node, as claimed. To the contrary, *Chrabaszcz* discloses that when a primary server <u>fails,</u> the execution of the application resumes on a backup server. *See Chrabaszcz* at ¶ 68.

Since *Chrabaszcz* fails to expressly or inherently describe each and every element of the claimed invention, Applicants respectfully submit that at least claim 1 is in condition for allowance over the applied art.

With respect to independent claim 13, Applicants respectfully submit that the applied art does not disclose or suggest "wherein the transfer of the application from the first Node to the at least one second Node occurs without the application having to fail-over," as recited, among other features, in independent claim 13. *Chrabaszcz* does not disclose or suggest at least this feature of independent claim 13. *Chrabaszcz* discloses that when a primary server <u>fails,</u> the execution of the application resumes on a backup server. *See Chrabaszcz* at ¶ 68. Therefore, Applicants respectfully submit that independent claim 13 is in condition for allowance over the applied art.

With respect to independent claim 19, Applicants respectfully submit that *Chrabaszcz* does not disclose or suggest "each instantiation of the Package contains sufficient information to implement the application on any Node of the Cluster without requiring the first Node to fail-over the application to the second Node," as recited, among other features, in independent claim 19. As described above, *Chrabaszcz* does not disclose or suggest at least this feature of independent claim 19. Therefore, Applicants respectfully submit that independent claim 19 is in condition for allowance over the applied art.

Independent claim 20 recites, among other features, "transferring implementation responsibility of the application from the first Node to the at least one additional Node when <u>a fault condition is detected for the application</u> on the first Node" (emphasis added). Applicants respectfully submit that *Chrabaszcz* does not disclose or suggest at least this feature of the claimed invention. *Chrabaszcz* at paragraph 38, lines 3-7 discloses "Netframe Cluster software, to remap the execution of clustered applications, or clustered programs, <u>in the event of a server failure</u>" (emphasis added). However, *Chrabaszcz* does not disclose or suggest transferring implementation responsibility when a fault condition is detected for the

application on the first Node, as claimed. Therefore, Applicants respectfully submit that independent claim 20 is in condition for allowance over the applied art.

Claims 2-12 depend from independent claim 1 and claims 14-18 depend from independent claim 13. Therefore, claims 2-12 and 14-18 are allowable for the reasons stated above with respect to the claims from which they depend, and for the additional features recited therein.
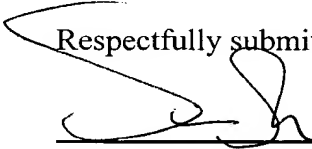
CONCLUSION

In view of the above amendments and remarks, Applicants believe that the rejection against this application has been fully addressed and that the application is now in condition for allowance. Therefore, withdrawal of the rejection and a notice of allowance for the application are respectfully requested.

It is believed that no extensions of time or fees are required, beyond those that may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 50-1078.

If the Examiner believes that a personal or telephonic interview would be of value in expediting the prosecution of this application, the Examiner is hereby invited to telephone the undersigned counsel to arrange for such a conference.

Respectfully submitted,

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